

SENATE JOINT RESOLUTION 46
By Herron

A RESOLUTION relative to the promulgation of state standards for the appointment, compensation and competency of defense counsel for post-conviction proceedings in capital cases pursuant to the Anti-Terrorism and Effective Death Penalty Act of 1996.

WHEREAS, the plethora of habeas corpus petitions seeking post-conviction relief in state capital cases that bombard our federal court systems has effectively eliminated sentences from being carried out in many states; and

WHEREAS, this General Assembly recognizes that justice delayed is justice denied; and

WHEREAS, the 104th U.S. Congress addressed the abuse of habeas corpus proceedings by death row inmates who file petition after petition seeking to overturn their sentences and/or convictions by passing the Anti-Terrorism and Effective Death Penalty Act of 1996 (Public Law 104-132); and

WHEREAS, the Anti-Terrorism and Effective Death Penalty Act of 1996 could reduce delays in carrying out sentences while preserving the right of those convicted of capital crimes to present valid claims in federal court by imposing time limits for the filing and judicial consideration of petitions; end the practice of filing multiple petitions except in the rarest instances; and require that state prisoners seeking habeas corpus relief exhaust all state remedies before bringing action in federal court; and

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WHEREAS, many of the provisions of the act apply to habeas corpus and other post-conviction relief proceedings for all state capital cases; however, numerous other provisions require the states to “opt in” by promulgating minimum standards for the appointment, compensation and competency of defense counsel for post-conviction proceedings in capital cases; and

WHEREAS, Section 107 of the Act (28 U.S.C. §2261) sets forth the criteria to determine whether the “opt-in” provisions are applicable in a particular state and provides that the opt-in provisions are applicable only “if a State establishes by statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.”; and

WHEREAS, the Office of the Attorney General has advised us that the Tennessee Supreme Court is the state government entity best able to establish this mechanism and promulgating standards applicable thereto; and

WHEREAS, this General Assembly most fervently believes that it is now time to unblock the logjam in our federal court system created by the abuse of habeas corpus proceedings by “opting-in” to these timely and progressive provisions of the federal act; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE-HUNDREDTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, That we hereby urge and encourage the Tennessee Supreme Court to act with all due speed and diligence to establish the mechanism required by Section 107 of the Anti-Terrorism and Effective Death Penalty Act of 1996 (28 U.S.C. §2261) to assure the equitable appointment, fair compensation and provide standards for competency of defense counsel for

post-conviction proceedings in state capital cases, and thus permit Tennessee to “opt-in” to certain provisions of the Act which will reduce the intolerable delays which are unfair to the families of those murdered, law enforcement officials and prosecutors, witnesses, and the innocent.

BE IT FURTHER RESOLVED, That an enrolled copy of this resolution be transmitted to the Chief Justice of the Tennessee Supreme Court and to the Administrative Director of the Courts.

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